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SEP 29 2005

In re Application of :
Schick et al. :
Application No. 09/736,495 : ON PETITION
Filed: December 13, 2000 :
Attorney Docket No. :
20-LC-2099/624226.289 :

OFFICE OF PETITIONS

This is a decision on the Petition to Claim Benefit Under 35 U.S.C. [§] 120, 121 or 365(c) of a Prior Copending Nonprovisional Application or International Application Designating the United States of America (37 CFR 1.78(a)(3), filed June 10, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of the prior-filed nonprovisional applications set forth in the concurrently filed amendment.

This Petition is hereby **dismissed**.

Applicable Law

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1) above.

As to item (1), 37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. See MPEP Section 201.11, Rev. 2, May 2004, Reference to Prior Application. The amendment filed June 10, 2005 fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment¹ which sets forth the relationship of the prior-filed application(s) is required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 PO Box 1450
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By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
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 401 Dulany Street
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¹ Note 37 CFR 1.121

Any inquiries concerning this decision may be directed to
Petitions Attorney Derek L. Woods at (571) 272-3232.

A handwritten signature in cursive script that reads "Frances Hicks". The signature is written in dark ink and is positioned above the printed name.

Frances Hicks

Lead Paralegal

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy